IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 243 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-Yes.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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NATIONAL INSURANCE CO. LTD - Appellant(s)
Versus
ATUL P JOSHI & 2 - Defendant(s)

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Appearance :
MR MEHUL SHARAD SHAH for Appellant(s) : 1,
MR SK PATEL for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 12/10/2007

ORAL JUDGMENT

1. The present appeal is against the interim award passed by the Tribunal for interim compensation

under Section 140 of the Motor Vehicles Act.

2. As such the contentions which are sought to be canvassed by the learned advocate for the appellant in the present appeal are covered by the decision of this Court in the case of Bajaj Allianz General Insurance Co. Ltd. v. Jentibhai Bhimjibhai Ghotiya and another in First Appeal No.1768 of 2007, decided on 30/3/2007. In the said matter, this Court has observed as under:

> "3. Mr. Nanavati, learned counsel appearing for the appellants in both the appeals raised the contention that since there was no additional payment of the premium, qua liability of the driver, there was no liability of the insurance company and consequently, the Tribunal has no jurisdiction. Therefore, he submitted that the Appeals may be entertained. During the course of the hearing, he relied upon the decision of this Court in First Appeal No.1193/02 (Coram:A.M.Kapadia,J.) decided on 31.03.2005; in First Appeal No.3088/97 & Ors. (Coram:K.S.Jhaveri,J.) decided on 14.08.2006; in First Appeal No.2310/03 (Coram:Akshay H.Mehta,J.) decided on 21.02.2007 and he contended that different views are taken. However, considering the facts and circumstances, similar view may be taken by this Court.
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> 4. It may be recorded that essential purpose of fixing the payment under Section 140 of the Motor Vehicles Act is to provide immediate compensation by way of an interim measure to the injured or the victim of the accident or the dependents, as the case may be. The detailed examination of the contention may be at the time when final award is passed and such an interim order is subject to the

final award. It may be that in very very rare case, this Court may examine the question of jurisdiction, if it touches to the root of the matter. However, normally the defence of the Insurance Company can better be examined at the final award. If such an approach is not taken and the exercise of power under Section 140 is read to leave room for a full fledge detailed inquiry, it may frustrate the very purpose of the interim measure to be provided to the claimant. Suffice it to say that the Tribunal has to exercise the judicial discretion at the prima facie stage after considering the material prima facie. As such, the exercise is undertaken by the concerned Tribunal in the impugned orders, hence, I find that the present cases are not such, which may fall in the exceptional category for interference qua ordering for interim payment by way of an interim measure.

5. However, the grievance on the part of the Insurance Company against the claimant for refund of the amount in the event it succeeds in the claim petition, consequently resulting into a situation of no liability on the part of the Insurance Company, can be sufficiently taken care of if the claimant at the time of withdrawal of the amount furnishes the security or surety to the satisfaction of the Tribunal and even otherwise also, the payment is subject to the final award. Even on the aspects of abandonment of the claim by the claimant after having withdrawn the amount or after having received the interim payment, may not be permissible and therefore, the grievance raised on behalf of the appellants to the extent of putting condition upon the claimant to file an undertaking appears to be reasonable.

6. It appears that the above referred decisions of different Benches of this Court, in certain cases, withdrawal of the payment is permitted to the extent of 50%, whereas in certain case, the amount is ordered to be deposited in the Fixed Deposit Receipt and the interest is made payable. In the impugned orders, the Tribunal has permitted withdrawal to the extent of 30%, so far as First Appeal No. 1768/07 is concerned and so far as First Appeal No. 1769/07 is concerned, the Tribunal has permitted 50% of withdrawal and the remaining amount in both the cases are even otherwise ordered

to be invested to the Tribunal.

7. Under the above circumstances, I find that if the withdrawal as ordered by the Tribunal is permitted on furnishing of solvent surety/security to the satisfaction of the Tribunal, the same would not prejudice the rights of the claimant. Similarly, if the undertaking is ordered to be filed by the claimant as per the decision, the same also would not be prejudicial to the rights of the claimants since in any case, the claimant is to proceed with the claim petition for further compensation.

8. Hence, the impugned order of the Tribunals are not required to be interfered with at this stage. However, the order of the Tribunal shall continue with the further following directions:

> (1) The Tribunals shall permit withdrawal of the amount upon the furnishing of solvent surety/security of the equal amount by the claimants.
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> (2) The claimants shall also file an undertaking before the Tribunal prior to the withdrawal of the order to the effect that the main claim petition shall not be abandoned or shall not be withdrawn or shall not be permitted to be dismissed in default or for any other cause by him and the claimants shall pursue the main claim petition on merits.“

3. However, the learned advocate for the appellant further contended that in the present case, involvement of the vehicle is doubtful in as much as the date of accident is 3/3/2000 and the complaint is filed on 15/3/2002 and the number of vehicle was not given. As per the claimant, the bus came from front side and dashed with him

whereas the witnesses have stated that the bus came from the back side. Therefore, the learned counsel for the appellant submitted that the case alleged in the claim petition is not believable and the Court may direct the Tribunal to decide the main claim petition and till then, the amount which has been invested may be ordered to be continued.

4. In my view at the stage of the application under Section 140 of the Motor Vehicles Act, prima facie involvement of the vehicle is required to be considered. Filing of the criminal complaint or minor contradiction in the statement, are not to be given weightage at this stage, since the matter is to be examined at the prima facie stage. Ultimately, at the time when main claim petition is to be tried, the witnesses are to be examined and all parties have the opportunity of examination and cross examination and thereafter only, the conclusion is to be recorded upon the reliability of such witnesses or otherwise. Similarly, it is not a principle sine qua non that in all MACP cases the condition precedent is filing of the criminal

complaint. It may be that in a given case by way of supporting evidence or to examine the genuineness or otherwise, the factum of filing of criminal complaint may be considered by the Tribunal but merely because there is some contradiction or that the number of vehicle is not mentioned, would not be the only ground to dis-entitle the claimant for interim compensation. Ultimately it may very facts to facts of each case. In the present case, the Tribunal has recorded the prima facie finding and therefore, no departure is required to be made in the present case as sought to be canvassed on behalf of the appellant.

5. Hence, similar direction deserves to be issued in the present appeal also. Hence, following directions:

5.1) The Tribunals shall permit withdrawal of the amount upon the furnishing of solvent surety/security of the equal amount by the claimants.

5.2) The claimants shall also file an undertaking

before the Tribunal prior to the withdrawal of the order to the effect that the main claim petition shall not be abandoned or shall not be withdrawn or shall not be permitted to be dismissed in default or for any other cause by him and the claimants shall pursue the main claim petition on merits.“

6. First Appeal is disposed of accordingly. No order as to cost.

(JAYANT PATEL, J.)

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